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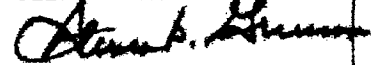
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CLERK OF THE COURT



EIGHTH JUDICIAL DISTRICT COURT

CLARK COUNTY, NEVADA

PREMIER ONE HOLDINGS, INC., a Nevada
Corporation,

Plaintiff,

vs.

HAMERA CORPORATION, an Unknown
Entity; E*TRADE BANK, an Unknown Entity;
CITIMORTGAGE INC., a New York
Corporation; ELKHORN COMMUNITY
ASSOCIATION, a Nevada Non-Profit
Corporation; CITY OF LAS VEGAS, a
Government Entity; ATC ASSESSMENT
COLLECTION GROUP, a California Limited
Liability Company, DOES I-X INDIVIDUALS;
and DOE ENTITIES XI-XX

Defendants.

CASE NO.: A-13-675910-C

DEPT. NO.: XXX

CITIMORTGAGE, INC.,

Counter-Claimant

v.

PREMIER ONE HOLDINGS, INC.,

Counter-Defendant

FINDINGS OF FACTS, CONCLUSIONS OF LAW AND JUDGMENT

This matter having come on for Bench Trial before the Honorable Jerry A. Wiese on August 15, 2018; the Court having considered the evidence; and good cause appearing therefor, enters the following Findings of Facts, Conclusions of Law and Judgment.

FINDINGS OF FACT

1. This case involves a real property commonly known as 7313 Hospitality Place, Las Vegas, Nevada 89131 (the "Subject Property").



1 2. On or about March 10, 2006, Wayne and Debra Berwick (the "Borrowers") obtained
2 a loan for \$180,000.00 in order to purchase the Subject Property.

3 3. Additionally, the Borrowers executed a promissory note (the "Underlying Loan") and
4 a Deed of Trust in order to effectuate the purchase of the Subject Property. The Deed of Trust listed
5 Home Loan Center, Inc., d/b/a LendingTree Loans ("Lending Tree") as the "Lender" and Mortgage
6 Electronic Registration Systems, Inc. ("MERS"), as the nominee for Lending Tree, as the
7 beneficiary under the Deed of Trust. The Deed of Trust was recorded on March 20, 2006 with the
8 Clark County Recorder's Office.
9

10 4. On December 16, 2010, MERS, as the nominee for Lending Tree, the owner of the
11 Underlying Loan, recorded an Assignment of Deed of Trust. The Assignment of Deed of Trust
12 expressly stated that all beneficial interest in the Deed of Trust and the Underlying Loan was being
13 granted, assigned, and transferred to Citimortgage, Inc. ("Citi").
14

15 5. On December 14, 2009, Elkhorn Community Association (the "HOA"), through its
16 agent Angius & Terry Collections ("ATC"), recorded and served, pursuant to and in compliance
17 with NRS Chapter 116, a Notice of Delinquent Assessment Lien. The notice stated an amount
18 delinquent of \$622.57.

19 6. On January 20, 2010, the HOA, through its agent ATC, recorded and served, pursuant
20 to and in compliance with NRS Chapter 116, a Notice of Default and Election to Sell Under Notice
21 of the Delinquent Assessment Lien. The notice stated an amount delinquent of \$1,420.15.
22

23 7. On October 18, 2012, the HOA, through its agent ATC, recorded and served,
24 pursuant to and in compliance with NRS Chapter 116, a Notice of Sale. The notice stated an amount
25 delinquent of \$3,846.65.

26 8. On November 13, 2012, Premier One Holdings, Inc. ("Premier") purchased the
27 Subject Property at the public auction as the highest bidder for the amount of \$4,100.00, as
28



1 evidenced by the Foreclosure Deed recorded on November 19, 2012 with the Clark County
2 Recorder's Office.

3 9. The foreclosure sale complied with all statutory requirements for notices pursuant to
4 NRS Chapter 116, and all applicable Nevada law.

5 10. There was no evidence of fraud, unfairness or oppression resulting in and/or causing
6 the amount of the purchase price at the foreclosure sale and/or affecting the foreclosure sale.
7

8 11. At the time of the HOA foreclosure sale, Citi was physically in possession of the
9 Underlying Loan, and CMI provided no evidence of a custodial agreement between CMI and the
10 Federal Home Loan Mortgage Corporation ("Freddie Mac").

11 12. Based upon the testimony and evidence presented, the Court finds that there was no
12 competent evidence supporting the contention that Freddie Mac owned the Underlying Loan for the
13 Subject Property at the time of the HOA foreclosure sale. The internal records and screen shots of
14 Citi and Freddie Mac were insufficient to establish an ownership interest.

15 13. The Federal Foreclosure Bar, therefore, was not applicable.
16

17 CONCLUSIONS OF LAW

18 1. As confirmed by the Nevada Supreme Court in its *SFR* Decision, the foreclosure sale
19 that was conducted pursuant to NRS Chapter 116 extinguished CMI's and/or its predecessor's
20 Deeds of Trust encumbering the Subject Property as a matter of Nevada law.

21 2. The Nevada Supreme Court in its *SFR* and *Shadow Wood* Decisions held and
22 confirmed that the recitals as contained in the Foreclosure Deed serve as conclusive proof that the
23 statutory requirements have been complied with as to the notice provisions of NRS 116.31162
24 through 116.31168, which concern the occurrence of default, notice, and publication of the
25 foreclosure sale. See *SFR* at 411-412. Therefore, the conclusiveness of the recitals as contained in
26 the Foreclosure Deed can only be challenged via post-sale equitable claims supported by a finding
27 of unfairness of the sale. See *Shadow Wood* at 1110-1112.
28



1 3. The Nevada Supreme Court in the case of *Nationstar Mortgage, LLC. v. Saticoy Bay*
2 *LLC Series 2227 Shadow Canyon*, 133 Nev. Adv. Op 91 (November 22, 2017), held that the
3 commercial reasonableness standard, which derives from Article 9 of the Uniform Commercial
4 Code, has no applicability in the context of a HOA foreclosure involving the sale of real property.
5 The Nevada Supreme Court, therefore, confirmed its holding in *Shadow Wood* as to the long-
6 standing rule that “inadequacy of price, however gross, is not in itself a sufficient ground for setting
7 aside a trustee’s sale” absent additional “proof of some element of fraud, unfairness, or oppression
8 as accounts for and brings about the inadequacy of price.” *Shadow Wood* at 1111 (quoting *Golden*
9 *v. Tomiyasu*, 79 Nev. 503, 514, 387 P. 2d 989, 995 (1963)).

11 4. The Nevada Supreme Court in its *PNC* Order in the case of *PNC Bank National*
12 *Association v. Saticoy Bay LLC Series 9320 MT. Cash Ave. UT 103*, Nevada Supreme Court case
13 no. 69595 (Nev. May 25, 2017 unpublished Order of Affirmance) held that the language in the pre-
14 sale notices constituted prima facie evidence that a HOA was foreclosing on its superpriority lien
15 comprised of monthly assessments pursuant to NRS Chapter 116.

17 5. Under Nevada law, certain presumptions are made pursuant to NRS 47.250, which
18 provides, in relevant part, that there are disputable presumptions. “[t]hat higher evidence would be
19 adverse from the inferior being produced.” NRS 47.250(4).

21 6. “A presumption not only fixes the burden of going forward with evidence, but it also
22 shifts the burden of proof.” *Yeager v. Harrah’s Club, Inc.*, 111 Nev. 830, 836, 897 P.2d 1083
23 (1959). “These presumptions impose on the party, against whom it [sic] is directed, the burden of
24 proving that the nonexistence of the presumed fact is more probable than its existence.” *Id.*

25 7. Under Article 3 of the Uniform Commercial Code as enumerated in NRS Chapter
26 104, a promissory note that is “endorsed-in-blank” is a bearer instrument, which means the physical
27 possessor of the promissory note is the de facto owner. “If the note is payable to bearer, that
28 ‘indicates that the person in possession of the promise or order is entitled to payment.’” *Leyva*, 127



1 Nev. at 255 P.3d at 1280 (quoting NRS 104.3109(1)(a)); *see also* NRS 104.3205(2) (explaining that
2 an instrument endorsed in blank is payable to bearer and "may be negotiated by transfer of
3 possession alone"); NRS 104.3201(2) ("If an instrument is payable to bearer, it may be negotiated
4 by transfer of possession alone."), *see Cf. Leyva*, 127 Nev. at 255 P.3d at 1280 (discussing the
5 process to be entitled to enforce order paper). *Edelstein v. Bank of New York Mellon*, 128 Nev. 505,
6 523, 286 P.3d 249, 261 (2012). Therefore, absent an endorsement or custodial agreement, the holder
7 of the bearer instrument is the owner of same.

8
9 8. CMI, in claiming, as an affirmative defense and counterclaim, that the Underlying
10 Loan for the Subject Property was *allegedly* owned by Freddie Mac at the time of the HOA
11 foreclosure sale, bears the burden of proof as to that issue. CMI failed to provide insufficient
12 evidence to establish that Freddie Mac owned, or had an ownership interest in, the Underlying Loan
13 for the Subject Property at the time of the HOA foreclosure sale.

14
15 9. The publicly recorded Assignment of Deed of Trust, expressly identified CMI as the
16 owner of the Underlying Loan, and was more convincing evidence of ownership than the evidence
17 produced by Citi by way of the internal records of Citi and Freddie Mac.

18
19 10. CMI asserted a Counterclaim for Unjust Enrichment, based on the contention that
20 CMI paid taxes and insurance from the date of the foreclosure sale through the date of trial.

21
22 11. To state a claim for unjust enrichment, a party must allege "[1] a benefit conferred on the
23 defendant by the plaintiff, [2] appreciation by the defendant of such benefit, [3] acceptance and
24 retention of such benefit [4] under circumstances such that it would be inequitable for him to
25 retain the benefit without payment of the value thereof." *Leasepartners Corp. v. Robert L.*
26 *Brooks Trust Dated November 12, 1975*, 942 P.2d 182, 187 (Nev. 1997). "Unjust enrichment
27 occurs whenever a person has and retains a benefit which in equity and good conscience belongs
28 to another." *Id.* Additionally, "benefit in the unjust enrichment context. . .denotes any form of



1 advantage,' and is not confined to retention of money or property." *Certified Fire Prot. Inc. v.*
2 *Precision Constr.*, 283 P.3d 250, 257 (Nev. 2012).

3 Here, CMI has paid taxes and insurance from the date of the foreclosure sale through the
4 date of trial. The Stipulated facts indicate that from November 13, 2008 through March 12,
5 2018, CMI has paid \$15,307.15 for taxes and insurance.

6
7 **ORDER/JUDGMENT**

8
9 **THEREFORE, PURSUANT TO THE ABOVE FINDINGS OF FACT AND**
10 **CONCLUSIONS OF LAW, IT IS HEREBY ORDERED, ADJUDGED AND DECREED** that
11 the Deed of Trust and any assignments thereof, as liens on the Subject Property are hereby
12 cancelled and without legal force or effect, and do not convey any right, title or interest in and to the
13 Subject Property to Citi and/or its predecessors in interest and/or its assignees.

14 **IT IS FURTHER HEREBY ORDERED, ADJUDGED AND DECREED** that Citi and/or
15 its predecessors in interest and/or assignees do not have any estate, right, title, lien or interest in or
16 to the Subject Property or any part of the Subject Property.

17
18 **IT IS FURTHER HEREBY ORDERED, ADJUDGED AND DECREED** that CMI is
19 entitled to a monetary award for Unjust Enrichment, against Plaintiff, in the amount of \$15,307.15.

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1 **IT IS FURTHER HEREBY ORDERED, ADJUDGED AND DECREED** that there is no
2 just reason for delay of entry of final judgment and final judgment is so entered pursuant to Rule 54
3 of the Nevada Rules of Civil Procedure.

4 DONE and DATED this 21 day of September, 2018.

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9 DISTRICT COURT JUDGE
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